

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EDMAR FINANCIAL COMPANY, LLC; IRISH
BLUE & GOLD, INC.; and XTX MARKETS
LIMITED,

Plaintiffs,

v.

CURRENEX, INC.; GOLDMAN SACHS & CO.
LLC; HC TECHNOLOGIES, LLC; STATE
STREET BANK AND TRUST COMPANY;
STATE STREET GLOBAL MARKETS
INTERNATIONAL LIMITED; and JOHN DOE
DEFENDANTS 1-5,

Defendants.

Case No. 1:21-cv-06598 (LAK)

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants¹ respectfully request that this Court consider *Gamma Traders - I LLC v. Merrill Lynch Commodities, Inc.*, No. 21-853, 2022 WL 2821504 (2d Cir. July 20, 2022) (“*Gamma*”), as supplemental authority in support of Defendants’ arguments that Plaintiffs failed to adequately plead antitrust injury, out-of-pocket fraud loss and unjust enrichment. See ECF Nos. 54 at 18–20 and 73 at 8–9 (antitrust injury); ECF Nos. 54 at 30–33 and 73 at 14–16 (out-of-pocket fraud loss); ECF Nos. 54 at 50–51 and 73 at 26–27 (unjust enrichment).

Gamma affirms the dismissal of plaintiff investors’ claims under the Commodities and Exchange Act (“CEA”) because plaintiffs failed to plausibly plead that the defendants’ fraudulent trading activity caused plaintiffs to suffer “actual damages.” Ex. A at 11, 13. The

¹ This Notice is submitted jointly on behalf of Currenex, Inc., Goldman Sachs & Co., LLC, HC Technologies, LLC, State Street Bank and Trust Company, and State Street Global Markets International Limited.

opinion adopts and elaborates on the Second Circuit’s analysis in *Harry v. Total Gas & Power North America, Inc.*, 889 F.3d 104, 112, 115 (2d Cir. 2018) (affirming dismissal of plaintiff’s CEA and Sherman Act claims based on the same pleading defect), and confirms that a “statistical-probability style of pleading” is insufficient to allege actual damages, particularly where the pleading does not “exclude the possibility that the net effect of the defendant’s [alleged misconduct] was beneficial for the plaintiff.” *Id.* at 14–15. As in *Gamma*, Plaintiffs here fail to identify a single trade they entered (or tried to enter) on the Currenex platform where the alleged tie-breaking rule was even triggered. *See* ECF No. 54 at 18–19. In fact, Plaintiffs do not even allege how frequently the tie-breaking rule was triggered on the Platform generally, whereas the plaintiffs in *Gamma* specifically alleged when spoofing occurred. Additionally, Plaintiffs’ own pleading concedes the alleged agreements between Currenex and the other Defendants were designed to attract greater liquidity to the platform, confirming “the possibility that the net effect [of those agreements] was beneficial” to the Plaintiffs. *See* ECF No. 54 at 19; ECF No. 73 at 9. While *Gamma* distinguishes cases involving *per se* price-fixing antitrust violations, Ex. A at 15–16, Plaintiffs here have not alleged a plausible bid-rigging scheme or any other conduct “manifestly detrimental to competition.” ECF No. 73 at 3–4. In addition, Plaintiffs here—like the plaintiffs in *Gamma*—did not plead that any particular trade caused an identifiable loss, Ex. A at 11–17, and thus did not satisfy the out-of-pocket fraud loss requirement. *Gamma*’s rejection of a “statistical-probability style of pleading” also undercuts Plaintiffs’ reliance on the same approach for their unjust enrichment claim. *Id.* at 15.

Dated: August 2, 2022

Respectfully submitted,

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